

1 A bill to be entitled
2 An act relating to electronic wills; amending s.
3 731.201, F.S.; revising the definition of the term
4 "will" to include electronic wills; amending s.
5 732.506, F.S.; specifying the manner in which an
6 electronic will is revoked; creating s. 732.521, F.S.;
7 providing a short title; creating s. 732.522, F.S.;
8 defining terms; creating s. 732.523, F.S.; specifying
9 requirements that must be satisfied in the execution
10 of electronic wills; creating s. 732.524, F.S.;
11 providing requirements for self-proof of electronic
12 wills; creating s. 732.525, F.S.; specifying the
13 circumstances under which a person is deemed to be in
14 the presence of or appearing before another; providing
15 that an electronic signature satisfies the requirement
16 that a document be signed; providing requirements for
17 certain documents to be deemed executed in this state;
18 creating s. 732.526, F.S.; authorizing an electronic
19 will that is properly executed in this or another
20 state to be offered for and admitted to probate in
21 this state; providing the venue for the probate of
22 such electronic will; creating s. 732.527, F.S.;
23 specifying requirements for service as a qualified
24 custodian; requiring qualified custodians to provide
25 access to or information concerning the electronic

26 | will, or the electronic record containing the
27 | electronic will, only to specified persons;
28 | authorizing a qualified custodian to destroy the
29 | electronic record of an electronic will after a
30 | certain date; requiring a qualified custodian to
31 | cancel, delete, destroy, mark as revoked, or
32 | obliterate an electronic will under certain
33 | circumstances; providing conditions under which a
34 | qualified custodian may cease service as a qualified
35 | custodian; requiring a qualified custodian to cease
36 | serving in such capacity upon the written request of
37 | the testator; requiring that a successor qualified
38 | custodian agree in writing to serve in that capacity
39 | for an electronic will before succeeding to office;
40 | specifying what constitutes an affidavit of a
41 | qualified custodian; requiring a qualified custodian
42 | to deliver certain documents upon request from the
43 | testator; prohibiting a qualified custodian from
44 | charging the testator a fee for such documents under
45 | certain circumstances; providing that a qualified
46 | custodian is liable for certain damages under certain
47 | circumstances; prohibiting a qualified custodian from
48 | terminating or suspending access to, or downloads of,
49 | an electronic will by the testator; prohibiting a
50 | qualified custodian from charging a fee for certain

51 actions taken upon the death of the testator;
52 requiring a qualified custodian to keep certain
53 information confidential; amending s. 733.201, F.S.;
54 providing for the proof of electronic wills; providing
55 requirements for admitting an electronic will that is
56 not self-proved into probate; providing that a paper
57 copy of an electronic will constitutes an "original"
58 of the electronic will subject to certain conditions;
59 providing applicability; providing an effective date.

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61 Be It Enacted by the Legislature of the State of Florida:

62 Section 1. Subsection (40) of section 731.201, Florida
63 Statutes, is amended to read:

64 731.201 General definitions.—Subject to additional
65 definitions in subsequent chapters that are applicable to
66 specific chapters or parts, and unless the context otherwise
67 requires, in this code, in s. 409.9101, and in chapters 736,
68 738, 739, and 744, the term:

69 (40) "Will" means an instrument, including a codicil,
70 executed by a person in the manner prescribed by this code,
71 which disposes of the person's property on or after his or her
72 death and includes an instrument which merely appoints a
73 personal representative or revokes or revises another will. The
74 term "will" includes an electronic will as defined in s.
75 732.522.

76 Section 2. Section 732.506, Florida Statutes, is amended
77 to read:

78 732.506 Revocation by act.—

79 (1) A will or codicil, other than an electronic will, is
80 revoked by the testator, or some other person in the testator's
81 presence and at the testator's direction, by burning, tearing,
82 canceling, defacing, obliterating, or destroying it with the
83 intent, and for the purpose, of revocation.

84 (2) An electronic will is revoked by the testator, some
85 other person in the testator's presence and at the testator's
86 direction, or the qualified custodian of the electronic will
87 pursuant to a writing signed in accordance with s. 732.502, by
88 marking it as revoked or canceling, deleting, destroying, or
89 obliterating it with the intent, and for the purpose, of
90 revocation.

91 Section 3. Section 732.521, Florida Statutes, is created
92 to read:

93 732.521 Short title.—Sections 732.521-732.527 may be cited
94 as the "Florida Electronic Wills Act."

95 Section 4. Section 732.522, Florida Statutes, is created
96 to read:

97 732.522 Definitions.—As used in ss. 732.521-732.527, the
98 term:

99 (1) "Electronic record" means a record created, generated,
100 sent, communicated, received, or stored by electronic means.

101 (2) "Electronic signature" means an electronic mark
102 visibly manifested in a record as a signature and executed or
103 adopted by a person with the intent to sign the record.

104 (3) "Electronic will" means a will, including a codicil,
105 executed in accordance with s. 732.523 by a person in the manner
106 prescribed by this act, which disposes of the person's property
107 on or after his or her death and includes an instrument that
108 appoints a personal representative or revokes or revises another
109 will or electronic will.

110 (4) "Qualified custodian" means a person who meets the
111 requirements of s. 732.527(1).

112 Section 5. Section 732.523, Florida Statutes, is created
113 to read:

114 732.523 Electronic wills.—Notwithstanding s. 732.502:

115 (1) An electronic will must meet all of the following
116 requirements:

117 (a) Exist in an electronic record.

118 (b) Be electronically signed by the testator in the
119 presence of at least two attesting witnesses.

120 (c) Be electronically signed by the attesting witnesses in
121 the presence of the testator and in the presence of each other.

122 If it is electronically signed by a notary public, the notary
123 public's signature must be accompanied by a notary public seal
124 that meets the requirements of s. 117.021(3).

125 (2) Except as otherwise provided in this act, all
126 questions as to the force, effect, validity, and interpretation
127 of an electronic will that complies with this section must be
128 determined in the same manner as in the case of a will executed
129 in accordance with s. 732.502.

130 Section 6. Section 732.524, Florida Statutes, is created
131 to read:

132 732.524 Self-proof of electronic will.—An electronic will
133 is self-proved if all of the following requirements are met:

134 (1) The electronic will is executed in conformity with
135 this act.

136 (2) The acknowledgment of the electronic will by the
137 testator and the affidavits of the witnesses are made in
138 accordance with s. 732.503 and are part of the electronic record
139 containing the electronic will, or are attached to, or are
140 logically associated with, the electronic will.

141 (3) (a) The electronic will designates a qualified
142 custodian; and

143 (b) The qualified custodian certifies under oath that to
144 its best knowledge the electronic will was at all times under
145 the control of the qualified custodian before being offered to
146 the court and that the electronic will has not be altered in any
147 way since the date of its execution.

148 Section 7. Section 732.525, Florida Statutes, is created
149 to read:

150 732.525 Method and place of execution.—For purposes of
151 this act, the execution and filing of a document with the court
152 as provided in this act or the Florida Probate Rules, the
153 execution of a durable power of attorney under s. 709.2105, and
154 the execution of a living will under s. 765.302:

155 (1) An individual is deemed to be in the presence of or
156 appearing before another individual if the individuals are
157 either:

158 (a) In the same physical location; or

159 (b) In different physical locations, but can communicate
160 with each other by means of live video and audio conference,
161 provided that the following requirements are met:

162 1. The signal transmission must be live and real time.

163 2. The signal transmission must be secure from
164 interception through lawful means by anyone other than the
165 persons communicating.

166 3. The persons communicating must simultaneously see and
167 speak to one another.

168 4. The persons communicating must establish the identity
169 of the testator or principal by:

170 a. Personal knowledge, provided that a person asserting
171 personal knowledge must explain how the identity of the testator
172 or principal has come to be known to, and the length of time for
173 which it has been known by, such person; or

174 b. Presentation of documentation that provides reasonable
175 proof of the identity of the testator or principal, including,
176 but not limited to, any of the forms of identification set forth
177 in s. 117.05(5) (b)2.a.-i.

178 5. The persons communicating must demonstrate awareness of
179 the events taking place, which may be achieved, without
180 limitation, by identification of themselves and any document
181 they intend to sign.

182 6. The testator or principal must state that he or she is
183 acting of his or her own free will.

184 7. A recording of the entire video and audio conference
185 must be stored in the electronic record containing the document
186 being signed.

187 (2) Any requirement that a document be signed may be
188 satisfied by an electronic signature.

189 (3) A document that is signed electronically is deemed to
190 be executed in this state if any one of the following
191 requirements is met:

192 (a) The document states that the person creating the
193 document intends to execute and understands that he or she is
194 executing the document in, and pursuant to the laws of, this
195 state.

196 (b) The person creating the document is, or the attesting
197 witnesses or Florida notary public whose electronic signatures

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are obtained in the execution of the document are, physically located within this state at the time the document is executed.

(c) In the case of a self-proved electronic will, the electronic will designates a qualified custodian who is domiciled in and a resident of this state or incorporated or organized in this state.

Section 8. Section 732.526, Florida Statutes, is created to read:

732.526 Probate.—An electronic will that is executed or deemed executed in another state in accordance with the laws of that state or of this state may be offered for and admitted to original probate in this state and is subject to the jurisdiction of the courts of this state. The venue for the probate of electronic wills is as provided in s. 733.101(1) or, in the case of the electronic will of a nonresident, may be the county in which the qualified custodian or attorney for the petitioner or personal representative has his or her domicile or registered office.

Section 9. Section 732.527, Florida Statutes, is created to read:

732.527 Qualified custodians.—

(1) To serve as a qualified custodian of an electronic will, a person or entity must:

(a) Not be an heir or devisee, as defined in s. 731.201, of the testator;

223 (b) Be domiciled in and a resident of this state or be
224 incorporated or organized in this state;

225 (c) In the course of its business, regularly employ, and
226 store electronic records containing electronic wills in, a
227 system that:

228 1. Protects electronic records from destruction,
229 alteration, or unauthorized access; and

230 2. Detects any change to an electronic record; and

231 (d) Furnish for any court hearing involving an electronic
232 will that is currently or was previously stored by the qualified
233 custodian any information requested by the court pertaining to
234 the qualified custodian's qualifications, policies, and
235 practices related to the creation, sending, communication,
236 receipt, maintenance, storage, and production of electronic
237 wills.

238 (2) The qualified custodian of an electronic will shall
239 provide access to or information concerning the electronic will,
240 or the electronic record containing the electronic will, only:

241 (a) To the testator;

242 (b) To persons authorized by the testator in the
243 electronic will or in written instructions signed by the
244 testator in accordance with s. 732.502;

245 (c) After the death of the testator, to the testator's
246 personal representative; or

247 (d) At any time, as directed by a court of competent
248 jurisdiction.

249 (3) The qualified custodian of the electronic record of an
250 electronic will may elect to destroy such record, including any
251 of the documentation required to be created and stored under
252 paragraph (1)(d), at any time after the earlier of the 5th
253 anniversary of the admission of a will of the testator to
254 probate or 20 years after the death of the testator.

255 (4) The qualified custodian of an electronic will shall
256 mark as revoked or cancel, delete, destroy, or obliterate the
257 electronic will at the direction of the testator given in the
258 presence of the qualified custodian, or upon receipt by the
259 qualified custodian of instructions signed by the testator in
260 accordance with s. 732.502.

261 (5) A qualified custodian who at any time controls the
262 electronic record of an electronic will may elect to cease
263 serving in such capacity by:

264 (a) Delivering the electronic will or the electronic
265 record containing the electronic will to the testator, if then
266 living, or, after the death of the testator, to the nominated
267 testator's personal representative; and

268 (b) Doing the following if the outgoing qualified
269 custodian intends to designate a successor qualified custodian:

270 1. Providing written notice to the testator or, after the
271 testator's death, the nominated testator's personal

272 representative of the name, address, and qualifications of the
273 proposed successor qualified custodian. The testator or a
274 testator's nominated personal representative must provide
275 written consent before the electronic record, including the
276 electronic will, is delivered to a successor qualified
277 custodian;

278 2. Delivering the electronic record containing the
279 electronic will to the successor qualified custodian; and

280 3. Delivering to the successor qualified custodian an
281 affidavit of the outgoing qualified custodian stating that:

282 a. The outgoing qualified custodian is eligible to act as
283 a qualified custodian in this state;

284 b. The outgoing qualified custodian is the qualified
285 custodian designated by the testator in the electronic will or
286 appointed to act in such capacity under this paragraph;

287 c. The electronic will has been in the control of one or
288 more qualified custodians since the time the electronic record
289 was created, and identifying such qualified custodians; and

290 d. To the best of the outgoing qualified custodian's
291 knowledge, the electronic will has not been altered since the
292 time it was created.

293
294 For purposes of making this affidavit, the outgoing qualified
295 custodian may rely conclusively on any affidavits delivered by a
296 predecessor qualified custodian in connection with its

297 designation or appointment as qualified custodian; however, all
298 such affidavits must be delivered to the successor qualified
299 custodian.

300 (6) Upon the written request of the testator, a qualified
301 custodian who at any time controls the electronic record of the
302 testator's electronic will must cease serving in such capacity
303 and must deliver to a successor qualified custodian designated
304 in writing by the testator the electronic will and the affidavit
305 required in subparagraph (5) (b) 3.

306 (7) A qualified custodian may not succeed to office as a
307 qualified custodian of an electronic will unless he or she
308 agrees in writing to serve in such capacity.

309 (8) If a qualified custodian is an entity, an affidavit,
310 or an appearance by the testator in the presence of a duly
311 authorized officer or agent of such entity, acting in his or her
312 own capacity as such, shall constitute an affidavit, or an
313 appearance by the testator in the presence of the qualified
314 custodian.

315 (9) A qualified custodian must provide a paper copy of an
316 electronic will and the electronic record containing the
317 electronic will to the testator immediately upon request. For
318 the first such request in any 365-day period, the testator may
319 not be charged a fee for being provided with these documents.

320 (10) The qualified custodian shall be liable for any
321 damages caused by the negligent loss or destruction of the

322 electronic record, including the electronic will, while it is in
323 the possession of the qualified custodian. A qualified custodian
324 may not limit liability for such damages.

325 (11) A qualified custodian may not terminate or suspend
326 access to, or downloads of, the electronic will by the testator.

327 (12) Upon the death of a testator, a qualified custodian
328 may not charge a fee for depositing the electronic will with the
329 clerk, providing the affidavits made in accordance with s.
330 732.503, or furnishing in writing any information requested by a
331 court under paragraph (1) (d).

332 (13) Except as provided herein, a qualified custodian must
333 at all times keep information provided by the testator
334 confidential and may not disclose such information to any third
335 party.

336 Section 10. Section 733.201, Florida Statutes is amended
337 to read:

338 733.201 Proof of wills.—

339 (1) Self-proved wills executed in accordance with this
340 code may be admitted to probate without further proof.

341 (2) A will, other than an electronic will, may be admitted
342 to probate upon the oath of any attesting witness taken before
343 any circuit judge, commissioner appointed by the court, or
344 clerk.

345 (3) If it appears to the court that the attesting
346 witnesses cannot be found or that they have become incapacitated

347 after the execution of the will or their testimony cannot be
348 obtained within a reasonable time, a will, other than an
349 electronic will, may be admitted to probate upon the oath of the
350 personal representative nominated by the will as provided in
351 subsection (2), whether or not the nominated personal
352 representative is interested in the estate, or upon the oath of
353 any person having no interest in the estate under the will
354 stating that the person believes the writing exhibited to be the
355 true last will of the decedent.

356 (4) If an electronic will is not self-proved, an
357 electronic will may be admitted to probate upon the oath of the
358 two attesting witnesses for the electronic will taken before any
359 circuit judge, commissioner appointed by the court, or the
360 clerk. If it appears to the court that the attesting witnesses
361 cannot be found, that they have become incapacitated after the
362 execution of the electronic will, or that their testimony cannot
363 be obtained within a reasonable time, an electronic will may be
364 admitted to probate upon the oath of two disinterested witnesses
365 providing all of the following information:

366 (a) The date on which the electronic will was created, if
367 the date is not indicated in the electronic will itself.

368 (b) When and how the electronic will was discovered, and
369 by whom.

370 (c) All of the people who had access to the electronic
371 will.

372 (d) The method by which the electronic will was stored and
373 the safeguards that were in place to prevent alterations to the
374 electronic will.

375 (e) A statement as to whether the electronic will has been
376 altered since its creation.

377 (f) A statement that the electronic will is a true,
378 correct, and complete tangible manifestation of the testator's
379 will.

380 (5) A paper copy of an electronic will which is a true and
381 correct copy of the electronic will may be offered for and
382 admitted to probate and shall constitute an "original" of the
383 electronic will.

384 Section 11. This act applies to electronic wills executed
385 on or after July 1, 2017.

386 Section 12. This act shall take effect July 1, 2017.